IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Arbitration Case No. 219 of 2006
Date of Decision: 23.03.2007

Jhimerheri Cooperative L & C Society Ltd.

.....Petitioner through
Mr. Vibhav Jain,
Advocate

versus

State of Haryana etc.

.....Respondents through
Mr. Randhir Singh, Addl.
A.G. Haryana

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Vijender Jain, Chief Justice (Oral)

The petitioner has filed this petition, inter-alia, on the basis of the arbitration clause 13-A of the agreement which reads as under:-

13-A(1) *" If any dispute or difference of any kind whatsoever shall arise between the Governor of Haryana/ his authorised agents and the contractor in connection with or arising out of the contract of the execution of the work that is (i) whether before its commencement or during the progress of the work or after its completion (ii) and whether before or after the termination abandonment of branch of the contract, it shall in the first instance be referred to for being settled by the Executive Engineer In-charge of the work at the time and he shall within a period of sixty days after being requested in writing by the contractor to do so, convey his decision to the contractor and subject to arbitration as here-in-after provided such decision in respect of every matter so referred shall be final and binding upon the contractor in case the work is already in progress, the contractor will proceed with the execution of the work on receipt of the decision by the Executive Engineer-in-Charge as aforesaid with all due diligence whether he or the Governor of Haryana/his authorised agent requires arbitration as hereinafter provided or not if the Executive Engineer-in-Charge of the work has conveyed his decision to the contractor and no claim to arbitration has been filled with him by the contractor within a period of sixty days from the receipt of letter communicating the decision the said decision shall be final and binding upon the contractor and will not be a subject matter of arbitration at all if the Executive Engineer in-charge of the work fails to convey his decision within a period of sixty days after being requested as aforesaid the contractor may within further sixty days, of the expiry of first sixty days from the date on which request has been made to the Executive Engineer-in-charge request the Engineer-in-chief, that*

the matter in dispute be referred to arbitration, as hereinafter provided.

2. All disputes or differences in respect of which the decision is not final and conclusive shall at the request in writing of either party, made in communication sent through registered A.D. post be referred to the sole arbitration of any serving Superintending Er. or Chief Er. of Haryana PWD B&R Branch to be nominated by designation by the Engineer-in-Chief Haryana PWD B&R Branch at the relevant time, it will be no objection to any such appointment that the arbitrator so appointed is a Government servant or that he had to deal with the matters to which the contract relates and that in the course of his duties as a Government servant he had expressed his views on all or any of the matters in dispute. The arbitrator to whom the matter is originally referred being transferred or vacating his office his successor in office as such shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

In case the arbitrator nominated by the Engineer-in-Chief is unable or unwilling to act as such for any reason, whatsoever the Engineer-in-Chief shall be competent to appoint and nominate any other Superintending Engineer or Chief Engineer as the case may be as arbitrator in his place and the Arbitrator so appointed shall be entitled to proceed with the reference.

3. It is also a term of this arbitration agreement that no person other than a person appointed by the Engineer-in-Chief, Haryana, PWD B&R Branch shall act as arbitrator and if for any reason that is not possible the matter shall not be referred to arbitration at all. In all cases where the aggregate amount awarded exceeds Rs. 25,000/- (Rupees twenty five thousand only), the arbitrator must invariably give reasons for his award

in respect of each claim and counter claim separately.

4. The Arbitrator shall award separately giving his award against each claim and dispute raised by either party including any counter claim individually and that any lump sum award shall not be legally enforceable."

It is case of the petitioner that petitioner invoked the arbitration clause vide letter dated 22.6.2005 requesting the respondent to appoint an Arbitrator in terms of the arbitration clause. It is further case of the petitioner that respondents vide its letter dated 18.8.2005 asked the petitioner to deposit 10% of the amount in dispute i.e. Rs. 99,500/- as arbitration charges. Pursuant to said directions, the petitioner deposited a sum of Rs. 99,500/-, on 6.9.2005 but inspite of said deposit, no Arbitrator was appointed by the respondents and therefore, the petitioner had no option except to file a petition under Section 11 of the Arbitration and Conciliation Act, 1996, before the District Judge on 17.11.2005 which was withdrawn by the petitioner on 10.02.2006 in view of the judgment of Supreme Court in **S.B.P. & Company v. Patel Engineering Ltd. 2005 (8) S.C.C. 618.** The petitioner moved the present petition in this Court on 26.05.2006.

Mr. Randhir Singh, Addl. A.G. for the respondent-State of Haryana has contended that Arbitrator was appointed by them on 18.11.2005 and therefore, in terms of the arbitration clause, the vacancy supplied by the respondents has to continue.

I have given careful considerations to the arguments advanced by learned counsel for the parties.

As a matter of fact, when the arbitration clause was invoked by the petitioner on 22.6.2005, the respondents ought to have appointed an Arbitrator within a period of 30 days on the receipt of such request. The respondents only asked the petitioner for deposit of the amount of Rs. 99,500/- after almost two months from the date of invocation of the arbitration clause. Intimation of the deposit towards arbitration expenses by the petitioner was made on 06.09.2005, when the petitioner had tendered the receipt of the said amount to the respondents. Thereafter, even if I extend the period for appointment of a Arbitrator from 06.09.2005, the respondents had to supply the vacancy by 06.10.2005. The respondents did not supply the vacancy within the stipulated period, therefore, the respondents lost the right to supply the vacancy in terms of the arbitration clause.

With the consent of the parties, I appoint Mr. T.S.Cheema, retired District & Sessions Judge, an sole Arbitrator, to adjudicate the dispute between the parties. The Arbitrator shall fix his own fee.

Parties are directed to appear before the Arbitrator on 28.04.2007 at 4.00 P.M.

The petition stands disposed of.

Intimation regarding appointment of as an Arbitrator in this petition be sent to Mr. T.S.Cheema, retired District & Sessions Judge, forthwith.

(VIJENDER JAIN)
CHIEF JUSTICE

23.03.2007
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